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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1096

CHARLES LANCE, JR.,

Petitioner,

vs.

LUCILLE PLUMMER et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Charles Lance, Jr., prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Fifth Circuit entered in consolidated appeals No. 21904 and No. 22035 on December 9, 1965.*

---

* The respondents are Lucille Plummer, Julie Scott, Hosea Williams, Willie Bolden, Shed Dawson, James Eddie Williams, Arliss White, Johnel White, J. S. Jackson, William Wright, Joanne Anderson, Barbara Alexander, Christine Thompson, Johnny Hamilton, Diane Thomas, and Leonard Reed, "individuals and as representatives of a class." (R. 6.)

Citations to Opinions Below

The opinions of the United States District Court for the Middle District of Florida granting an interlocutory injunction on August 5, 1964 (R. 27-33; App. 17), adjudging petitioner to be in contempt of court on August 20, 1964 (R. 375-78; App. 23), and entering a permanent injunction against petitioner and others on September 19, 1964 (R. 421-28; App. 26) are unreported and have been printed in Appendix A hereto. The opinion of the Court of Appeals for the Fifth Circuit is reported in 353 F.2d 585 and is printed in Appendix A hereto (App. 32). The judgments of the United States Court of Appeals for the Fifth Circuit entered in cases No. 21904 and No. 22035, respectively, are printed in Appendix A hereto (App. 46, 47).

Jurisdiction

The opinion and judgments of the Court of Appeals were entered on December 9, 1965. The statutory provision believed to confer jurisdiction on this Court to review the judgments in question by writ of certiorari is 28 U.S.C., § 1254(1).

Questions Presented

1. Whether a United States District Court has jurisdiction to entertain a class action on behalf of all "members of the Negro race" for the enforcement of rights based on Title II of the Civil Rights Act of 1964, 42 U.S.C., § § 2000a-2000a-6.

2. Whether an injunction order, purporting to enjoin parties to the litigation "and any other persons to whom notice or knowledge of this Order may come" is binding on persons other than parties receiving notice or knowledge of the order

so that such persons may be adjudged to be in contempt of court if found to have committed acts of the type prohibited by the order.

3. Whether a United States District Judge has the power to require a deputy sheriff appointed by state law to "give up his badge and cease his functions as a peace officer" until he has satisfied the District Judge that he "is no longer engaging in any of the acts prohibited" by the District Judge's injunction order purporting to bind "all persons to whom notice or knowledge of this Order may come."

Statutes and Rules Involved

The statutory provisions involved are Titles II and IX of the Civil Rights Act of 1964 (42 U.S.C., §§ 2000a-2000a-6, and 42 U.S.C., § 2000h), all of which have been printed in Appendix B hereto. Also involved are § 30.07, Florida Statutes 1965, and Rule 65(d), Federal Rules of Civil Procedure, printed in Appendix B hereto.

Statement of the Case

Petitioner seeks a review of judgments of the Court of Appeals affirming the District Judge's order that petitioner resign his position as deputy sheriff, surrender his badge and "no longer act under any color, guise, or pretense as a law enforcement or peace officer," until he satisfies the United States District Judge that he is no longer engaging in any acts prohibited by the District Judge's injunction order, entered in a case to which petitioner was not a party, purporting to enjoin all persons "to whom notice or knowledge of this Order may come" from interfering with the efforts of "any person of the Negro race" to enforce and enjoy full use of

public accommodations under Title II of the Civil Rights Act of 1964 (42 U.S.C., §§ 2000a-2000a-6).

On July 2, 1964, the Civil Rights Act of 1964 became law. On July 20, 1964, the respondents, alleging that they were "members of the Negro race" and represented a class consisting of "all other persons in St. Johns County, Florida, who are similarly situated and affected," filed their complaint in the United States District Court for the Middle District of Florida praying that the court enjoin the defendants named therein "and all persons similarly situated" from depriving or attempting to deprive "any person" of the right to full use of public accommodations as provided by §§ 201 and 202 of the Civil Rights Act of 1964 (42 U.S.C., §§ 2000a, 2000a-1). The complaint alleged that persons and firms named therein as Class I defendants represented a class consisting of all persons owning, operating or managing public accommodations in St. Johns County, all of whom had refused to serve Negroes "by reason of their race and color." The complaint also alleged that the persons and organizations named therein as Class II defendants had threatened and intimidated both "Negroes" and Class I defendants to defeat the purposes of Title II of the Civil Rights Act of 1964 and represented a class consisting of "persons who act in the selfsame manner" (R. 6-14).

The petitioner, Charles Lance, Jr., was not named as a party defendant.

On August 5, 1964, the District Judge entered an order for interlocutory injunction (R. 27-33). Paragraphs 1 and 2 of such order enjoined certain of the named Class I defendants from refusing to make full and unrestricted use of their facilities "available to Negroes" (R. 27-30). Paragraphs 3 and 4 of the order enjoined certain of the named Class II defendants, all members of the Ancient City Hunting Club and *"any other persons to whom notice or knowledge of this Order may come"*

from interfering with or threatening "any person of the Negro race" or any Class I defendant for the purpose of preventing the full enjoyment by "Negro persons" of the public accommodations owned or operated by the Class I defendants (R. 30-33).

On August 11, 1964, petitioner Lance, who was a bonded, but unsalaried, deputy sheriff, was heard to use the words "black bastards" as Arthur Funderberk and two other Negroes, none of whom was a named plaintiff in the case, were leaving after being served in a restaurant operated by a Class I defendant (R. 75-77, 97-99). On August 12, petitioner Lance followed an automobile driven by Funderberk on the public streets (R. 77-82). On August 13, Funderberk signed an affidavit stating that he had been "threatened" and "followed" by Lance (R. 36-37). On August 14, one of the attorneys for the plaintiffs filed the Funderberk affidavit, together with his own affidavit alleging, on information and belief, that Lance was a member of the Ancient City Hunting Club.

In the afternoon of Saturday, August 15, 1964, petitioner Lance was served with an order directing him to appear before the District Judge on Monday, August 17, 1964, to show cause why he should not be adjudged to be in civil contempt because of his wilful disobedience of the order for interlocutory injunction entered August 5, 1964 (R. 40).

Petitioner Lance appeared before the court on August 17, 1964, was called to the stand "as an adverse witness on behalf of the plaintiffs" and was vigorously cross examined by counsel for the plaintiffs and the District Judge (R. 137-206). At the conclusion of the hearing, the District Judge found that Lance was not a member of the Ancient City Hunting Club but that he "had actual knowledge and notice of the entry of the injunction and, in general, of its terms" and had violated paragraphs 3 and 4 of the order by cursing and following Funderberk (R. 367).

On August 20, 1964, the District Judge entered the order adding Lance as a Class II defendant and finding Lance guilty of "civil contempt" for having violated the terms of paragraphs 3 and 4 of the interlocutory injunction (R. 375-78; App. 23-25). The order required that within 20 days Lance

> ". . . shall submit a verified report to this Court that he has resigned his position as deputy sheriff of St. Johns County, Florida, and surrendered his badge and other incidents of office and of police equipment to his superiors; and that he shall no longer act under any color, guise, or pretense as a law enforcement or peace officer."
>
> R. 377; App. 24

The order also required that such verified report contain "proof of payment" by Lance of the sum of $200 to Tobias Simon, as attorney for the plaintiffs, and of all taxable court costs (R. 377-78; App. 24-25).

Petitioner Lance, conceiving that the contempt judgment had been entered against him as a non-party and was, therefore, appealable, entered an appeal to the United States Court of Appeals for the Fifth Circuit (Case No. 21904) on September 15, 1964 (R. 420). The main cause proceeded to the entry of a permanent injunction against petitioner Lance, although no further pleadings were filed and no testimony was taken following the District Judge's order that Lance be made a party (R. 421-28; App. 26). On September 19, 1964, petitioner Lance appealed from the permanent injunction (Case No. 22035) and the two appeals were consolidated by order of the Court of Appeals (R. 461).

Because of the importance of the questions involved, the attorney generals of Florida, Georgia, Louisiana and Mississippi appeared as amici curiae in the Court of Appeals.

On December 9, 1965, the Court of Appeals for the Fifth Circuit entered its opinion affirming the orders appealed from, with the provision that the contempt judgment be modified by adding the following language:

> "The sanction affecting respondent's power to act as a *law enforcement* or peace officer shall continue until the said Charles Lance shall purge himself by satisfying the court that he is no longer engaging in any of the acts prohibited by paragraphs 3 and 4 of the Injunction dated August 5, 1964."
>
> *Lance* v. *Plummer* (5th Cir. 1965), 353 F.2d 585, 592 (App. 45)

Reasons for Granting the Writ

I.

In holding that a United States District Court has jurisdiction to entertain a class action on behalf of all "members of the Negro race" for the enforcement of rights based on Title II of the Civil Rights Act of 1964, the Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, and has so far sanctioned such a departure by the District Court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Section 207 of Title II of the Civil Rights Act of 1964 (codified as Chapter 21, Subchapter II, Title 42 U.S.C.) gives the district courts of the United States jurisdiction of proceedings instituted pursuant to Title II, but also provides that "[t]he remedies provided in [Title II] shall be the exclusive

means of enforcing the rights based on [Title II]" (42 U.S.C., §2000a-6). The remedies provided in Title II are (1) "a civil action for preventive relief . . . by the person aggrieved" (§ 204, Civil Rights Act of 1964; 42 U.S.C., § 2000a-3), and (2) a civil action for preventive relief by the Attorney General where "any person or group of persons is engaged in a pattern or practice of resistance" to the rights secured by Title II (§ 206, Civil Rights Act of 1964; 42 U.S.C., § 2000a-5).

In filing this suit as a class action on behalf of all "members of the Negro race" to enjoin an alleged general pattern or practice of resistance to Title II, plaintiffs' attorneys, who acted "[o]f and for the N.A.A.C.P. Legal Defense and Educational Fund, Inc." (R. 14), wrongfully usurped the authority vested in the attorney general. The action was not a remedy provided in Title II and the District Court was without jurisdiction.

In rejecting petitioner Lance's contention that the District Court had no jurisdiction to entertain a class action on behalf of all members of the Negro race, the Court of Appeals said:

> "We do not find this argument persuasive, especially in light of the further language in § 207(b) which says, 'but nothing in this title shall preclude any individual * * * from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right' . . . ."
>
> 353 F.2d at 591 (App. 41)

Thus, the Court of Appeals erroneously interpreted the words "such right" as used in § 207(b) to refer to the rights based on Title II. A reading of § 207(b) in its entirety clearly shows that the words "such right" refer to any right other than those based on Title II:

> "The remedies provided in this subchapter shall be the exclusive means of enforcing the rights based on

this subchapter, but nothing in this subchapter shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this subchapter, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right."

42 U.S.C., § 2000a-6(b)

The decisions in the courts below create an incongruous result which is of importance to the public at large. Whereas any person, who is a member of any race other than the Negro race and is aggrieved by a denial of full use of the accommodations of the Class I defendants, must look to the Civil Rights Act for his remedy, a member of the Negro race so aggrieved looks to the injunction for his remedy and may have the offender brought in on little or no notice to show cause why he should not be adjudged to be in contempt of court.

II.

In holding that an injunction order purporting to enjoin parties to the litigation "and any other persons to whom notice or knowledge of this Order may come" is binding on persons, other than parties, receiving notice or knowledge of the order so that such persons may be adjudged to be in contempt of court if found to have committed acts of the type prohibited by the order, the Court of Appeals has rendered a decision in conflict with a decision of this Court and a decision of the Court of Appeals for the Eighth Circuit on the same matter.

In *Chase Nat. Bank* v. *City of Norwalk, Ohio* (1934), 291 U.S. 431, 434, 54 S.Ct. 475, 476, 78 L.Ed. 894, this Court held invalid an injunction order purporting to enjoin "all persons whomsoever to whom notice of this order shall come." And in *Kean* v. *Hurley* (8th Cir. 1950), 179 F.2d 888, 889, the Court of Appeals for the Eighth Circuit held invalid an injunction order purporting to enjoin "all persons whomsoever from and after the time they severally obtain notice or knowledge of the issuance of the injunction." The decision in the court below affirming an injunction order purporting to enjoin "any other persons to whom notice or knowledge of this Order may come" is in direct conflict with the cited decisions. It is also in conflict with the provisions of Rule 65(d), Federal Rules of Civil Procedure, limiting the scope of injunction orders (App. 57).

The order to show cause issued to petitioner Lance as an alleged "member of the Ancient City Hunting Club, and as such member a Class II Defendant" (R. 39-40). When the evidence failed to show that Lance was a member of the Ancient City Hunting Club (R. 352), but did show that Lance

had heard on television of the issuance of the injunction order (R. 162, 209), the District Judge found that "he had actual knowledge and notice of the entry of the injunction and, in general, of its terms" (R. 367), and adjudged him guilty of contempt for having violated paragraphs 3 and 4 of the injunction order (R. 367, 377.).*

The continuing existence of a permanent injunction purporting to be binding on all persons having knowledge or notice of the injunction is an unlawful threat to the freedom of every citizen residing within the Middle District of Florida. This Court should exercise its supervisory power to remove that threat.

---

* The Court of Appeals' decision indicates that the record would have supported a finding that Lance's conduct was in active concert or participation with Chew, a Class I defendant, and suggests that such a finding would justify Lance's conviction of contempt. The short answer to that suggestion (other than the fact that it changes the bases of both the charge and the judgment against Lance) is that Chew was enjoined by paragraphs 1 and 2 of the injunction order only and was not enjoined by paragraphs 3 and 4 except as he might come within the term "other persons having notice or knowledge." Accordingly, a finding that Lance acted in participation with Chew in violating paragraphs 3 and 4 would have made no material difference.

III.

In holding that a United States District Judge has the power to require a deputy sheriff appointed by state law to "give up his badge and cease his functions as a peace officer" until he has satisfied the District Judge that he "is no longer engaging in any of the acts prohibited" by the District Judge's injunction order purporting to bind "all persons to whom notice or knowledge of this Order may come," the Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, and has so far departed from the accepted and usual course of judicial proceeding as to call for an exercise of this Court's power of supervision.

In the contempt judgment, the District Judge imposed as a sanction the requirement that petitioner Lance surrender his badge and report under oath that he would "no longer act under any color, guise, or pretense as a law enforcement or peace officer" (R. 377). The Court of Appeals modified the District Judge's order to provide that this sanction should continue only" until the said Charles Lance shall purge himself by satisfying the court that he is no longer engaging in any of the acts prohibited" (353 F.2d at 592).

The decisions in the courts below vitally affect the balance of powers between the state and federal governments. If officers elected or appointed under the state law and deriving their powers from the state law are only free to exercise such powers upon satisfying a United States District Judge that they are not engaging in acts prohibited by orders of a United States District Judge, the states and citizens of the states have lost their right of self-government.

The decisions in the courts below wrongfully deprive petitioner Lance of his civil right to be and function as an officer of the State of Florida. More than that, they wrongfully deprive the people of the State of Florida of their right to have state officers of their own choosing. Petitioner Lance was appointed as deputy sheriff pursuant to the provisions of § 30.07, Florida Statutes 1965, by the sheriff duly elected by the voters of St. Johns County, Florida. His right to serve in that capacity cannot be subject to the pleasure of a United States District Judge.

The widespread importance of this question resulted in the appearance in the Court of Appeals of the attorney generals of the states of Florida, Georgia, Louisiana and Mississippi as amici curiae. The importance of the question requires that this Court review the decision below.

Conclusion

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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